IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.229 OF 2003

IN

SUMMARY SUIT NO.114 OF 2003

M/s Alfa Lamination .. Plaintiff

versus

M/s Archana Inds Trans.P.Ltd .. Defendant

...

Mr.S.Rajeshwar i/b M/s Lega Apex for Plaintiff.

Mr. R.V.Govilkar for Defendant.

CORAM : D.G. KARNIK, J

DATED : 31st January 2005.

P.C:-

1. This Summons for Judgment is taken out by the plaintiff in a suit for recovery of money for the value of the goods supplied. The plaintiff is a part of group of companies which consist of the plaintiff firm and another firm known as " Alfa Transcore, which has filed another bearing Suit No.113 of 2003. The defendant herein is also a part of the group of companies/concerns which are owned and/or controlled

by Mr. Prakash Gadodia and which are known as "Gadodia Group of Companies." The plaintiff and its group firms had supplied goods to the Gadodia Group of Companies and a large sum of money was due from them. According to the plaintiff settlement took palce between the parties in October, 1999 in pursuance of which Mr. Prakash Gadodia on behalf of his group agreed to pay the outstanding with interest @ 18 % p.a. and also agreed to honour the post-dated cheques which were previously given. He also agreed to revalidate the cheques by further revalidating the cheques for future dates. Accordingly the defendant revalidated the cheques and signed at the place where the dates were altered to a future date. As these cheques were not honoured the plaintiff has filed the present suit for recovery of the price of the goods.

2. The defendant contested the suit by filing an affidavit in reply. The defendant has annexed to the affidavit in reply a letter written by the plaintiff dated 29th October, 1998. According to the defendant, by the said letter the plaintiff agreed to accept a sum of Rs.26,00,000/- in full and final settlement of all the dues of the Gadodia Group of Companies to the plaintiff and its sister concerns. Learned counsel

for the defendant strongly relies upon this letter and submits that according to the said letter the settlement had taken place between the parties and the defendant had agreed to accept a sum of Rs.26,00,000/- in full and final settlement. Assuming that such a settlement had taken place and was binding on the parties still admittedly a sum of Rs.26,00,000/- was due and payable by the defendant and its sister concerns. It is not disputed that out of Rs.26,00,000/- only Rs.10,00,000/- are paid by two cheques of Rs.5,00,000/- and balance amount of Rs.16,00,000/- has not been paid. Cheques issued by the defendant have also been revalidated and the revalidated cheques are annexed to the plaint.

3. The defence of the defendant at best can be that the settlement has been reached in the sum of Rs.26,00,000/-. Out of which Rs.10,00,000/- have been paid. Therefore, even at the best of the defence of the defendant a sum of Rs.16,00,000/- is still due and payable in respect of the present suit and other suit which has been filed by the plaintiff and its sister concern. I see no reasonable defence available to the defendant in respect of the sum of Rs.16,00,000/-. Hence, the defendant can only be granted a conditional

leave to defend the suit subject to its depositing in the Court a sum of Rs.16,00,000/- jointly in respect of the present suit as well as other Suit viz. Summary Suit No.1134 of 2003. For these reasons I pass the following order :

. " The defendant is granted conditional leave to defend the suit subject to its depositing in court a sum of Rs.16,00,000/- within six weeks. On such deposit the suit shall stand transferred to the list of commercial causes. If the amount is deposited, the same shall be invested in State Bank of India/or any other nationalised bank of the choice of the defendant if the choice is indicated at the time of deposit initially for a period of 13 months to be renewed from time to time till decision of the suit.

D.G.KARNIK, J